RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

SCHEDULE

GENERAL EXPLANATORY NOTE:

[ ] Words or expressions in bold type in square brackets indicate omissions from existing rules.

_____ Words or expressions underlined with a solid line indicate insertions into existing rules.

Definition

1. In this Schedule the "Rules" means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notice Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984, R. 2094 of 13 September 1985, R. 810 of 2 May 1986, R. 2164 of 2 October 1987, R. 2642 of 27 November 1987, R. 1421 of

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15 July 1988, R. 210 of 10 February 1989, R. 608 of 31 March 1989, R. 2628 of 1 December 1989, R. 185 of 2 February 1990, R. 1929 of 10 August 1990, R. 1262 of 30 May 1991, R. 2410 of 30 September 1991, R. 2845 of 29 November 1991, R. 406 of 7 February 1992, R. 1883 of 3 July 1992, R. 109 of 22 January 1993, R. 960 of 28 May 1993, R. 974 of 1 June 1993, R. 1356 of 30 July 1993, R. 1843 of 1 October 1993, R. 2365 of 10 December 1993, R. 2529 of 31 December 1993, R. 181 of 28 January 1994, R. 411 of 11 March 1994, R. 873 of 31 May 1996, R. 1063 of 28 June 1996, R. 1557 of 20 September 1996, R. 1746 of 25 October 1996, R. 2047 of 13 December 1996, R. 417 of 14 March 1997, R. 491 of 27 March 1997, R. 700 of 16 May 1997, R. 798 of 13 June 1997, R. 1352 of 10 October 1997, R. 785 of 5 June 1998, R. 881 of 26 June 1998, R. 1024 of 7 August 1998, R 1723 of 30 December 1998, R. 315 of 12 March 1999, R. 568 of 30 April 1999, R. 1084 of 10 September 1999, R. 1299 of 29 October 1999, R. 502 of 19 May 2000, R. 849 of 25 August 2000, R. 373 of 30 April 2001, R. 1088 of 26 October 2001, R. 1755 of 5 December 2003, R. 229 of 20 February 2004, R. 1343 of 12 December 2008, R. 1345 of 12 December 2008, R. 516 of 8 May 2009, R. 518 of 8 May 2009, R. 86 of 12 February 2010, R. 87 of 12 February 2010, R. 88 of 12 February 2010, R. 89 of 12 February 2010, R. 90 of 12 February 2010, R. 500 of 11 June 2010, R. 591 of 09 July 2010, R. 980 of 19 November 2010, R. 981 of 19 November 2010, R. 464 of 22 June 2012, R. 992 of 7 December 2012, R. 114 of 15 February 2013, R. 262 of 12 April 2013, R. 471 of 12 July 2013, R. 472 of 12 July 2013, R. 759 of 11 October 2013, R. 212 of 28 March 2014, R. 213 of 28 March 2014, R. 214 of 28 March 2014, R. 30 of 23 January 2015, R. 31 of 23 January 2015, R. 317 of 17 April 2015, R. 781 of 31 August 2015, R. 3 of 19 February 2016, R. 678 of 3 June 2016, R. 1055 of 29 September 2017, R. 1272 of 17 November 2017, R. 1318 of 30 November 2018, R. 61 of 25 January 2019, R. 842 of 31 May 2019 and R. 1343 of 18 October 2019.

Insertion of Rule 41A in the Rules

2. The following rule is hereby inserted in the Rules after rule 41:

"41A Mediation as a dispute resolution mechanism

(1) In this rule—
'dispute' means the subject matter of litigation between parties, or an aspect thereof.
'mediation' means a voluntary process entered into by agreement between the parties to a dispute, in which an impartial and independent person, the mediator, assists the parties to either resolve the dispute between them, or identify issues upon which agreement can be reached, or explore areas of compromise, or generate options to resolve the dispute, or clarify priorities, by facilitating discussions between the parties and assisting them in their negotiations to resolve the dispute.

(2) *(a)* In every new action or application proceeding, the plaintiff or applicant shall, together with the summons or combined summons or notice of motion, serve on each defendant or respondent a notice indicating whether such plaintiff or applicant agrees to or opposes referral of the dispute to mediation.
(b) A defendant or respondent shall, when delivering a notice of intention to defend or a notice of intention to oppose, or at any time thereafter, but not later than the delivery of a plea or answering affidavit, serve on each plaintiff or applicant or the plaintiff's or applicant's attorneys, a notice indicating whether such defendant or respondent agrees to or opposes referral of the dispute to mediation.
(c) The notices referred to in paragraphs *(a)* and *(b)* shall be substantially in accordance with Form 27 of the First Schedule and shall clearly and concisely indicate the reasons for such party's belief that the dispute is or is not capable of being mediated.

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(d) Subject to the provisions of subrule 9*(b)* the notices referred to in this subrule shall be of a without prejudice and shall not be filed with the registrar.

(3) *(a)* Notwithstanding the provisions of subrule (2), the parties may at any stage before judgment, agree to refer the dispute between them to mediation: Provided that where the trial or opposed application has commenced the parties shall obtain the leave of the court.

(b) A Judge, or a Case Management Judge referred to in rule 37A or the court may at any stage before judgment direct the parties to consider referral of a dispute to mediation, whereupon the parties may agree to refer the dispute to mediation.

(4) Where a dispute is referred to mediation—

(a) the parties shall deliver a joint signed minute recording their election to refer the dispute to mediation;

(b) the parties shall prior to the commencement of mediation proceedings enter into an agreement to mediate;

(c) the time limits prescribed by the Rules for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party to the dispute from the date of signature of the minute referred to in paragraph *(a)* to the time of conclusion of mediation: Provided that any party to the proceedings who considers that the suspension of the prescribed time limits is being abused, may apply to the court for the upliftment of the suspension of the prescribed time limits; and

(d) the process of mediation shall be concluded within 30 days from the date of signature of the minute referred to in paragraph *(a)*: Provided that a Judge or the court may on good cause shown by the parties extend such time period for completion of the mediation session.

(5) *(a)* In proceedings where there are multiple parties some of whom are agreeable to mediation and some of whom are not, parties who are agreeable to mediation may proceed to mediation notwithstanding any other party's refusal to mediate.

(b) The time limits prescribed for the delivery of pleadings and notices and the filing of affidavits or the taking of any step shall be suspended for every party from the date of signature of the minute referred to in subrule (4)*(a)* to the time of conclusion of mediation by the parties who have elected to mediate: Provided that any party to the proceedings who considers that such suspension of time limits is being abused, may apply to the court for the upliftment of such suspension.

(c) In any matter where there are multiple issues, the parties may agree that some issues be referred to mediation and that the issues remaining in dispute may proceed to litigation.

(d) If any issue remains in dispute after mediation, the parties may proceed to litigation on such issue in dispute.

(6) Except as provided by law, or discoverable in terms of the Rules or agreed between the parties, all communications and disclosures, whether oral or written, made at mediation proceedings shall be confidential and inadmissible in evidence.

(7) *(a)* Upon conclusion of mediation the parties who engaged in mediation shall inform the registrar and all other parties by notice that mediation has been completed.

(b) Notwithstanding the failure of parties who have engaged in mediation to deliver the notice referred to in paragraph *(a)*, the suspension of the time limits referred to in subrule (4)*(c)* shall lapse unless a Judge or a court has extended the time limit and notice thereof has been given to all parties to the proceedings within 5 days of such order.

(8) *(a)* Mediation shall be deemed to be completed within 30 days from the date of signature of the joint minute referred to in subrule (4)*(a)*, from which date the suspension of the time limits prescribed for the delivery of pleadings and notices and the filing of affidavits or the taking of any step referred to in subrule (4)(c) shall lapse: Provided that where mediation is completed before the aforesaid period of 30 days, the parties who engaged in mediation shall deliver a notice contemplated in subrule (7) indicating that mediation has been completed.

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(b) The parties who engaged in mediation and the mediator who conducted the mediation shall within five days of the conclusion of mediation, issue a joint minute indicating—

(i) whether full or partial settlement was reached or whether mediation was not successful; and

(ii) the issues upon which agreement was reached and which do not require hearing by the court.

(c) It shall be the joint responsibility of the parties who engaged in mediation to file with the registrar, the minute referred to in paragraph *(b)*.

(d) No offer or tender made without prejudice in terms of this subrule shall be disclosed to the court at any time before judgment has been given.

(e) Where the parties have reached settlement at mediation proceedings the provisions of rule 41 shall apply *mutatis mutandis*.

(9) *(a)* Unless the parties agree otherwise, liability for the fees of a mediator shall be borne equally by the parties participating in mediation.

(b) When an order for costs of the action or application is considered, the court may have regard to the notices referred to in subrule (2) or any offer or tender referred to in subrule (8)*(d)* and any party shall be entitled to bring such notices or offer or tender to the attention of the court."

Amendment of rule 70 of the Rules

3. Rule 70 of the Rules is hereby amended—

(a) by the substitution for subrule (3B) of the following subrule:

"(3B) *(a)* Prior to enrolling a matter for taxation, the party who has been awarded an order for costs shall, by notice as near as may be in accordance with Form 26 of the First Schedule—

[*(a)*] (i) afford the party liable to pay costs at the time therein stated, and for a period of ten (10) days thereafter, by prior arrangement, during normal business hours and on any one or more such days, the opportunity to inspect such documents or notes pertaining to any item on the bill of costs; and

[*(b)*] (ii) require the party to whom notice is given, to deliver to the party giving the notice within **[twenty (20)]** ten (10) days after the expiry of the period in subparagraph (i), a written notice of opposition, specifying the items on the bill of costs objected to, and a brief summary of the reason for such objection.

(b) For the purposes of this subrule, the days from 16 December to15 January, both inclusive, must not be counted in the time allowed for inspecting documents or notes pertaining to any item on a bill of costs or the giving of a written notice to oppose.";

(b) by the insertion after subrule (3B) of the following subrule:

"(3C) No taxation shall be set down in the days from 16 December to 15 January, both inclusive, except—

(a) where the period for delivery of the notice to oppose has expired, before the commencement of the period 16 December and 15 January, both dates inclusive, and no notice of intention to oppose has been delivered;

(b) where the party liable to pay the costs, has consented in writing to the taxation in his or her absence; or

(c) for the taxation of writ and post-writ bills."; and

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(c) by the substitution for subrule (4) of the following subrule:

"(4) The taxing master shall not proceed with the taxation of any bill of costs unless he or she is satisfied that the party liable to pay the costs has received—
(a) due notice in terms of subrule (3B); and
(b) not less than 10 days' notice of the date, time and place of such taxation and that he or she is entitled to be present thereat: Provided that such notice shall not be necessary—
(i) if the party liable to pay the costs has consented in writing to taxation in his or her absence;
(ii) if the party liable to pay the costs failed to give notice of intention to oppose in terms of subrule (3B); or
(iii) for the taxation of writ and post-writ bills:
Provided further that, if any party fails to appear after having given the notice to oppose in terms of subrule (3B)**[*(b)*]**<u>*(a)*(ii)</u>, the taxation may proceed in their absence.".

Amendment of the First Schedule to the Rules

4. The First Schedule to the Rules is hereby amended—

(a) by the substitution for Form 26 of the following Form:

"FORM 26
NOTICE OF INTENTION TO TAX BILL OF COSTS

IN THE HIGH COURT OF SOUTH AFRICA (..... DIVISION)	
	CASE NO _____
In the matter between _____	Plaintiff/Applicant
and	
_____	Defendant/Respondent
TAKE NOTICE THAT ..... (party) intends submitting the attached bill of costs to the taxing master at ..... (place) for taxation.	
You may inspect the documents or notes pertaining to any item on the bill of costs at ..... (address) between the hours of ..... (business hours) for a period of ten (10) days after receipt of this notice. You may furthermore file a notice of intention to oppose the taxation within **[twenty (20)]** <u>10 (ten)</u> days after **[receipt of this notice]** <u>the expiry of the period permitted for the inspection</u>. In your notice of intention to oppose you shall list all the items on the bill of costs to which you object, and a brief summary of the reason for your objection. Should you fail to file your notice of intention to oppose within the time specified, the bill of costs will be submitted to the taxing master for taxation without further notice to you.	

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If you do give notice of intention to oppose within the specified time, you may at the taxation object to the items specified in your notice of opposition.	
DATED at _____ on this _____day of _____ 20_____	
	_____ Attorney for ..... (Address)
To: _____ Attorney for ..... (Address)	

(b) by the insertion after Form 26, of the following Form:

"**FORM 27**
NOTICE OF AGREEMENT OR OPPOSITION TO MEDIATION

IN THE HIGH COURT OF SOUTH AFRICA
(DIVISION)

Case No.....

In the matter between:

Plaintiff/Applicant

And

Defendant/Respondent

Please take notice that the Plaintiff/Applicant/Defendant/Respondent agrees to/opposes the referral of this matter to mediation.

The Plaintiff/Applicant/Defendant/Respondent does so for the following reasons:

_____
_____
_____
_____
_____
_____
_____
_____
_____

Dated at _____on this _____day of _____

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Plaintiff/Applicant/Attorney
Defendant/Respondent/Attorney
Address

To: The Registrar of the Court".

Commencement

5. This rule and form come into operation on **9 March 2020**.

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